

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

LUI HIP CHIN,

Appellant,

VS.

LORENZO T. PLUMMER, Chinese Immigrant Inspector  
in Charge at Helena, Montana,

Appellee.

In the Matter of the Application of LUI HIP CHIN,  
an alien, for a Writ of Habeas Corpus.

Transcript of the Record

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*Upon Appeal from the United States District Court  
for the District of Idaho, Southern Division.*

Filed

AUG 10 1916

F. D. Monckton,  
Clerk.

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No. \_\_\_\_\_

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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alien, for Writ of Habeas Corpus,*  
*Appellant.*

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P. E. CAVANEY, Boise, Idaho,

*For Appellant.*

J. L. McCLEAR, U. S. District Attorney, Boise,  
Idaho,

*For the Department of Labor.*

*In the District Court of the United States, District  
of Idaho, Southern Division.*

PETITION.

In the matter of application of Lui Hip Chin, an  
alien, for a Writ of Habeas Corpus—No. 564.

*To the Honorable Frank S. Dietrich, Judge of the  
District Court of the United States for the Dis-  
trict of Idaho:*

The petition of Lui Hip Chin, an alien respectfully shows:

First: That he is unlawfully imprisoned, detained, confined and restrained of his liberty by Lorenzo T. Plummer, a duly appointed, qualified and acting United States Immigration Inspector, and Thomas B. Martin, the duly appointed, qualified and acting United States Marshal for the District of Idaho, at Boise, Ada County. State of Idaho.

Second: That said imprisonment, detention, confinement, and restraint are illegal; and the illegality thereof consists in this, to-wit: That your petitioner now is and ever since the 13th day of September, 1915, has been a bona fide resident of the United States and a subject of the Chinese Empire, and a person belonging to a class of aliens which are not exempt from entering the United States, to-wit: a Chinese merchant, and being at all of the times herein mentioned entitled to all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.



Third: That on the 13th day of September, 1915, your petitioner was by the United States Immigration Officers and Inspectors in Charge, and the officers and agents of the United States Immigration Service and the Department of Labor, duly and regularly permitted to enter, and did then and there enter the United States at the port of San Francisco, California, on the steamship "Siberia" as a Chinese merchant.

Fourth: That your petitioner is not committed, confined or detained by virtue of a final judgment or order of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon any such judgment or order; that the cause and pretense of such confinement or restraint, according to the best knowledge and belief of your petitioner, is wholly without any right or authority whatever, but is based upon a certain warrant of arrest issued by the Department of Labor of the United States, a copy of said warrant being attached hereto, hereby referred to, and made a part hereof and marked Exhibit "A."

Fifth: That by virtue of and pursuant to said warrant your petitioner was on the 15th day of January, 1916, by Lorenzo T. Plummer, Inspector in Charge at Helena, Montana, by and through Thomas Topping, a Chinese and Immigration Inspector, acting under the advice and direction of the said Lorenzo T. Plummer, and Thomas B. Martin, United States Marshal for the District of Idaho, arrested and taken into custody and confined in the County



Jail of Ada County, at Boise, Idaho, and subsequent, to-wit, on the 19th day of January, 1916, at Boise, Ada County, Idaho, was given a summary hearing before the said Thomas Topping and was on the 21st day of March, 1916, ordered deported from the United States to the country whence he came by the Assistant Secretary of Labor. A copy of said order of deportation and notification are attached hereto, hereby referred to and made a part hereof and marked Exhibits "B" and "C" respectively.

Your petitioner further relates and shows:

A. That said warrant of arrest was issued against your said petitioner without authority of law.

B. That said Department of Labor of the United States has no authority whatever or at all to issue the said warrant or to hear said case.

C. That your said petitioner asserts and claims that he has a right to remain in the United States after his admission as a Chinese merchant even though your said petitioner has since his said admission performed manual labor.

D. That the said summary hearing which your petitioner had before the said Chinese and Immigration Inspector was not conducted according to law and the rules and regulations of the Department of Labor of the United States, and said hearing was unfair and unjust to your petitioner and did not afford to your petitioner the rights and privileges guaranteed to him by the Constitution and the laws of the United States and the treaty of the Chin-

ese Empire with the United States, and your petitioner was denied the right to have process issued from a court or tribunal of competent jurisdiction compelling the attendance of witnesses on his behalf at said hearing, or to pay the necessary expense or fees of such witnesses, and is and has been thereby summarily and arbitrarily deprived of his liberty, and said Chinese and Immigration Inspector has grossly abused the discretion imposed upon him by law and the rules and regulations of the Department of Labor of the United States in said hearing in not permitting your said petitioner an opportunity to have a fair and impartial trial in said matter.

E. That said evidence adduced at said hearing of said cause was wholly inadmissable and incompetent to prove that your petitioner had become a laborer since his arrival and admission into the United States.

F. That said evidence taken at said hearing failed to justify the said order of deportation of your said petitioner.

Wherefore your petitioner prays that a writ of Habeas Corpus may be granted directed to the said Lorenzo T. Plummer and to Thomas B. Martin commanding them to have the body of your petitioner before your Honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your Honor concerning your petitioner, together with the time and cause of his detention, and said writ, and that he may be restored to his liberty.

Dated on this 6th day of April, 1916, at Boise,  
Ada County, Idaho.

P. E. CAVANEY,  
Attorney for your petitioner.

Residence: Boise, Idaho.

Filed: April 6, 1916. W. D. McReynolds, Clerk.  
(Duly Verified.)

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(Title of Court and Cause—No. 564.)

ORDER.

On reading and filing the petition of Lui Hip Chin, duly signed and verified by him, whereby it appears that he is illegally imprisoned and restrained of his liberty by Lorenzo T. Plummer and Thomas B. Martin, in the city of Boise, County of Ada, State of Idaho, and stating wherein the illegality consists, from which it appears to me that a writ of habeas corpus ought to issue:

It is ordered that a writ of habeas corpus issue out of and under the seal of the District Court of the United States, District of Idaho, Southern Division, directed to the said Lorenzo T. Plummer and Thomas B. Martin, commanding them to have the body of the said Lui Hip Chin before me, in the court room of the said court, on the 12th day of April, 1916, at 10 o'clock a.m. of that day, to do and receive what shall then and there be considered concerning the said Lui Hip Chin, together with the time and cause of his detention, and that they have then and there the said writ.



12      *Matter of Application of Lui Hip Chin*

Dated on the 7th day of April, 1916.

FRANK S. DIETRICH,  
Judge.

Endorsed: Filed April 7th, 1916. W. D. McReynolds, Clerk.

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(Title of Court and Cause—No. 564.)

DEMURRER.

Now comes J. L. McClear, United States Attorney for the District of Idaho, and demurs to the petition for writ of habeas corpus in the above entitled application and for cause of demurrer alleges:

I.

That the petition herein filed does not state facts sufficient on which to grant a habeas corpus.

J. L. McCLEAR,

United States Attorney for the District of Idaho.

Endorsed: Filed April 15, 1916. W. D. McReynolds, Clerk.

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At a stated term of the United States District Court within and for the District of Idaho, Southern Division, begun and held at Boise, within said division on the 27th day of April, 1916.

*Present:* The Honorable Frank S. Dietrich, Judge.

Among the proceedings had were the following, to-wit:

In the matter of the application of Lui Hip Chin, an alien, for Writ of Habeas Corpus.

The demurrer to the petition of Lui Hip Chin, an

alien, for a writ of habeas corpus came regularly on for hearing before the Court. The applicant, Lui Hip Chin, being present with his counsel, P. E. Cavaney, Esq., together with J. L. McClear, United States District Attorney. After the argument of counsel the matter was submitted to the Court upon briefs and was by the Court taken under advisement.

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(Title of Court and Cause—No. 564.)

STATEMENT OF EVIDENCE.

Lui Hip Chin, Alien, arrested pursuant to Departmental Warrant of Arrest No. 53947-13 dated December 21, 1915. The hearing was had on January 19, 1916, at Boise, Idaho. Present, Thomas Topping, Examining Officer; Lui Hip Chin, Alien; P. E. Cavaney, Counsel for Alien; and Interpreter Lin S. Lee.

Alien sworn by Inspector Topping.

Examination by Inspector Topping:

Lui Hip Chin: I waive reading of warrant.

Statement by Inspector Topping: You are to be given a hearing to show cause why you should not be deported in conformity with law. You have the right to be represented by counsel.

Alien: Mr. P. E. Cavaney is my attorney. I am unable to furnish \$1000.00 bond at this time. I am confined in the County Jail at Boise, Idaho. I have examined the evidence upon which I was arrested. I made a statement to you at Mountain Home on December 4, 1915.

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Inspector Topping: (Exhibiting statement to alien). Question: Is this your signature?

Alien: Yes. This statement has been read over to me by the Interpreter. (Statement introduced in evidence and marked "Govt. Exhibit A.")

(GOVT. EXHIBIT A.)

Thomas Topping, Inspector.

Mountain Home, Idaho, December 4th, 1915.  
Case of Lui Hip Chin, Section Six Merchant.

Loui Mon, sworn as interpreter.

Lui Hip Chin, sworn, testified as follows:

Q. What is your name?

A. Lui Hip Chin.

Q. How old are you according to Chinese reckoning?

A. 28 years.

Q. When did you first come to the United States?

A. Sept. 30th, 1915. Landed in San Francisco.

Q. How long did you stay in San Francisco?

A. About two months.

Q. How long have you been in Mountain Home?

A. I come to Mountain Home two months ago, I stayed three weeks in San Francisco.

Q. Isn't it a fact that you came direct to Mountain Home from San Francisco?

A. Yes.

Q. What have you been doing since you have been in Mountain Home?

A. Nothing.

Q. I found him washing dishes this morning in the New York Cafe.



A. He just help.

(Note: The hands of Lui Hip Chin show very distinctly that he has been washing dishes for some time.)

Q. Is this your certificate of identity?

A. Yes.

Certificate of identity No. 20794, issued to Lui Hip Chin, age 26 years, height 4—6 $\frac{3}{4}$  on cut (should be 5 ft. 6 $\frac{3}{4}$ ), occupation merchant; Stockton, California. Admitted as Sec. 6, Canton Merchant. Scar front of right ear. Issued at the Port of San Francisco, California, September 30th, 1915.

Q. Your brother lives in Mountain Home, does he not?

A. Yes.

Q. Give me his name.

A. Lui Mon.

Q. He is a tailor and cleaner?

A. Yes.

Q. How long has he been in Mountain Home?

A. Seven years.

Q. Have you understood all the questions put to you by the interpretor?

A. Yes.

Q. Give me your address.

A. Bon Restaurant, Mountain Home, Idaho.

(Signed in Chinese.)

(Signed) Thomas Topping,

Chinese and Immigrant Inspector.

Mr. Cavaney: Counsel for alien was not present when this statement was made at Mountain Home.

Certificate of Identity No. 20794 introduced in evidence and marked "Govt. Exhibit B."

(GOVT. EXHIBIT B.)  
CERTIFICATE OF IDENTITY.  
Card No. 20794.

Name: Lui Hip Chin.

Age: 26.

Height: 4 ft., 6¾ in.

Occupation: Merchant, Stockton, Calif.

Admitted as: Sec. 6, Canton Merchant No. 14662—  
4-8, SS "Siberia" September 13th, 1915.

Physical marks and peculiarities: Scar front of  
right ear.

Issued at the Port of: San Francisco, Calif., Sep-  
tember 20th, 1915.

SAMUEL W. BACKUS,  
Immigration Official in Charge.

Ex parte statement of Louie Mon dated December  
4, 1915, taken at Mountain Home, Idaho, introduced  
in evidence and marked "Govt. Exhibit C."

(GOVT. EXHIBIT C.)

Mountain Home, Idaho, December 4th, 1915.  
Case of Lui Hip Chin, Section Six, Merchant.

Witness, Louie Mon sworn.

Q. Do you understand and speak English?

A. Yes, fairly well.

Q. What are your names?

A. Just Loui Mon is my boyhood name; I have  
no married name, no other. I catch my wife in Moun-  
tain Home.

Q. How old are you.

A. 57 years.

Q. When did you first come to the United States?

A. I forget. K. S. 7th or 8.

Q. Have you made any trip to China.

A. Yes, once.

Q. When did you make that trip?

A. I forget.

Q. Have you got a certificate of residence?

A. No, it was burned in a laundry in Glenns Ferry, 13 years ago.

Q. How long have you been in Mountain Home?

A. Eight years.

Q. What was the number of your certificate?

A. I forget.

Q. Who was your witness?

A. I forget.

Q. Where did you get your certificate?

A. Portland, Oregon. Louie Nom is the name on my certificate.

Q. How old were you then?

A. 35 years old.

Q. Was there a photograph on your certificate?

A. Yes.

Q. Was it taken with your hat on or off?

A. With my hat on.

(Witness advised as to how to obtain duplicate.)

Q. Did you ever make application for a duplicate certificate?

A. No.

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Q. Did you tell anyone in Glenns Ferry about the loss of your certificate?

A. No.

Q. Who was your landlord in Glenns Ferry?

A. I forget.

Q. How much rent did you pay?

A. \$10.00 per month.

Q. Do you know this boy? (Exhibit photo of Lui Hip Chin.)

A. Yes, that is my brother.

Q. How long has he been in Mountain Home?

A. A couple of months.

Q. What has he been doing?

A. Nothing.

Q. Isn't it a fact that he has worked as a dishwasher and washed at the New York Cafe, Mountain Home?

A. No, he has done nothing.

Q. Did you pay his expenses from China to San Francisco?

A. No, I paid his expenses from Frisco to Mountain Home.

Q. Did you send the money to China?

A. No, I sent it to Frisco through a bank here.  
(Banks closed 1 p.m. Saturday.)

Q. Did you buy a return ticket?

A. No.

Q. What did he do in China?

A. Go to school. He learn to talk American here and then he go in business.

Q. Have you any children?



A. No.

Q. Have you understood all the questions I have asked you?.

A. Yes.

(Signed in Chinese.)

(Signed) Thomas Topping,

Chinese and Immigration Inspector.

Ex parte statement of John W. Jayne introduced in evidence and marked "Govt. Exhibit D."

(GOVT. EXHIBIT D.)

Mountain Home, Idaho, December 4th, 1915.

Case of Lui Hip Chin, Section Six, Merchant.

Statement of John W. Jayne.

Q. What is your name?

A. John W. Jayne.

Q. What is your business?

A. Automobile business.

Q. How long have you been in Mountain Home?

A. About 10 years.

Q. Do you know this Chinese boy? (Exhibiting photo of Lui Hip Chin.)

A. Yes.

Q. How long have you known him?

A. I have boarded every night until two weeks ago at the New York Restaurant, Mountain Home, for a year. I first saw this boy there not less than six weeks ago. He has waited on me regularly since he first came or since I first saw him in the restaurant.

Q. Do you pass the restaurant daily or occasionally?

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A. Every day—several times every day.

Q. And during the past two weeks have you seen him in the restaurant?

A. Yes.

Q. Have you seen him do anything else beside wait on table?

A. Yes, making bread and washing dishes.

(Read back to witness.)

(Signed) John W. Jayne.

Subscribed and sworn to before me this 4th day of December, 1915.

(Signed) Thomas Topping,

Chinese and Immigration Inspector.

Ex parte statement of F. W. Boyd introduced in evidence and marked "Govt. Exhibit E."

(GOVT. EXHIBIT E.)

Mountain Home, Idaho, December 4th, 1915.

Case of Lui Hip Chin, Section Six, Merchant.

Statement of F. W. Boyd.

Q. What is your name?

A. F. W. Boyd.

Q. What is your business?

A. Probation Officer.

Q. How long have you lived in Mountain Home, Idaho?

A. Eight years.

Q. Are you a married man?

A. Yes, but my wife and boy have been at my ranch for the past six or seven months.

Q. Did you ever eat any of your meals at the New York Restaurant?



A. Yes.

Q. Do you know this Chinese boy?  
(Exhibiting photo of Lui Hip Chin.)

A. Yes, he waits on table at the New York Restaurant.

Q. When did you first see him at the New York Restaurant?

A. About two months. I know the Chinaman who runs the restaurant. I had a good deal of trouble making this Chinese boy understand me.

Q. How often have you visited this restaurant during the past two months?

A. About forty times. Sometimes I would eat one meal and sometimes two.

Q. Was this Chinese boy waiting on table in the restaurant on those occasions.

A. Yes.

Read back.

(Signed) F. W. Boyd.

Subscribed and sworn to before me at Mountain Home on this 4th day of December, 1915.

(Signed) Thomas Topping,  
Chinese and Immigration Inspector.

Ex parte statement of J. F. Bertram introduced in evidence and marked "Govt. Exhibit F."

(GOVT. EXHIBIT F.)

Mountain Home, Idaho, December 4th, 1915.  
Case of Lui Hip Chin, Section Six, Merchant.

Statement of J. F. Bertram.

Q. What is your name?

A. J. F. Bertram.

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Q.    What is your business?

A.    Merchant tailor, Mountain Home, Idaho.

Q.    How long have you lived in Mountain Home?

A.    10 years.

Q.    Are you a married man?

A.    No.

Q.    Do you go to the New York Restaurant, Mountain Home for your meals?

A.    Yes, I go there frequently.

Q.    Do you know this boy? (Exhibiting photo of Lui Hip Chin.)

A.    Yes, I don't know his name, but he waits on table at the New York Restaurant, he has waited on me a dozen times or more.

Q.    When did you first see him in this restaurant?

A.    About a month or six weeks ago. He was there a week ago, I have not been there for a week. I have not been in the restaurant for a week.

Q.    Do you know the proprietor of the New York Restaurant?

A.    Yes, I know him by the name of Lim.

(Read back to witness.)

(Signed) J. F. Bertram.

Subscribed and sworn to before me this 4th day of December, 1915.

(Signed) Thomas Topping,  
Chinese and Immigrant Inspector.

Ex parte statement of H. L. Grebe introduced in evidence and marked "Govt. Exhibit G."

(GOVT. EXHIBIT G.)

Mountain Home, Idaho, December 4th, 1915.

Case of Lui Hip Chin, Section Six, Merchant.

Statement of H. L. Grebe.

Q. What is your name?

A. H. L. Grebe.

Q. How long have you lived in Mountain Home?

A. I have lived in Boise for two years and in Mountain Home for six weeks.

Q. Do you know this Chinese boy? (Exhibiting photo of Lui Hip Chin.)

A. Yes, he waited on me November 4th, 1915, at the New York Restaurant. I have not been there since. I have seen him in the restaurant when I have been passing by since that time.

(Read back to witness.)

(Signed) H. L. Grebe.

Subscribed and sworn to before me at Mountain Home, Idaho, this 4th day of December, 1915.

(Signed) Thomas Topping,  
Chinese and Immigrant Inspector.

Record and Exhibits filed May 1, 1916.

None of the above exhibits were made in the presence of alien or when his counsel was present.

Examination of alien by Mr. Cavaney:

I made this statement in Exhibit A voluntarily through an interpreter. Louie Mon, Inspector Topping and myself was present when I made this statement. I was not informed of the nature of the charge against me at that time. I was first informed of the nature of the charge against me when the



warrant was served last Saturday, January 15, 1916, at Quong On Chung's store at Boise by Mr. Topping. I was taken into custody and placed in jail. I was given Exhibit B when I was admitted at San Francisco. I came to the United States to look up business opportunities. I did not have Exhibit B on me at the time the warrant was served upon me. It was taken from me at Mountain Home by Mr. Topping. I came to the United States intending to engage in the mercantile business for myself. I was visiting and helping my friends at Mountain Home, Idaho. I helped Lum Wah in the New York Restaurant at Mountain Home a little bit while I was there. I removed dirty dishes to the kitchen. I did not wait on table. I merely helped him as a friend. I did not receive any money from him or any one else for my services. I was not employed by Louie Mon in any capacity. I was just staying and boarding at the New York Restaurant as any other person would do. I do not understand English. Leong Hing waited on table while I was there. I did not wash dishes while I was there. I offered to pay for my board and room while there but Lum Wah would not accept it. While in the United States I have never engaged in mining, fishing, huckstering, peddling, laundering, or in baking, drying or otherwise preserving shell or other fish for home consumption or exportation.

Examination of alien by Inspector Topping:

I left Mountain Home on January 3rd to go to Boise. I did not 'phone or tell Louie Mon that I had

gone to San Francisco. I did not leave Mountain Home to evade arrest.

Examination of alien by Mr. Cavaney:

I have \$500.00 at Fah Wah Company, Dupont Street, San Francisco. I exhibited \$1000.00 to the United States Immigration Officers when I landed. The money was drawn by a Canton bank on a bank in San Francisco, California.

Further examination of alien by Inspector Topping:

I have not studied English since I have been in the United States. I do not understand the words Coffee, Steak, Bacon, Soup, and Bread. I can not write my name in English. You did not find me washing dishes at Mountain Home in the New York Restaurant. I have been investigating business locations in Boise, and I intended to study English when I located a permanent business. I exhibited \$1000.00 at San Francisco when I was examined under the Immigration Law. I have \$40.00 now at Quong On Chung Company in Boise but I can draw on Fah Wah Company, San Francisco, if I want any money. I should not be deported to China because I am rightfully in the United States and have not done any manual labor of any kind since I arrived.

Witness John W. Jayne being sworn by Inspector Topping testified as follows:

Examination by Mr. Cavaney:

In statement of December 4, 1915, I stated that I boarded at the New York Restaurant prior to that date. Lui Hip Chin had been there about six weeks

prior to that time. Lui Hip Chin waited on me nearly every day. He tried to take my order. There is no question but he was waiting on table. Some times the Chinese cook and proprietor would wait on table. Lui Hip Chin took my order frequently without the assistance of any other Chinese in the restaurant. I changed boarding at the New York Restaurant because they were disagreeable and I did not like them any longer. I boarded there a year prior to that time. I had trouble with the proprietor of the restaurant. I had him arrested for keeping dirty towels in his place. I did not owe him any money at that time. I perhaps owe him a few dollars at the present time.

Question: Then there is some animosity existing between yourself and the proprietor of the New York Restaurant? (Interrupted by Inspector Topping: Just a moment Mr. Cavaney. It is immaterial so far as this case is concerned whether there is any animosity existing between these Chinamen and this witness.) Mr. Cavaney was prohibited from pursuing further examination on this matter by the examining officer, Inspector Topping, and witness was prohibited from answering. Alien's counsel desired to show by this mode of questioning that there was animosity and hard feeling existing between the Chinese at Mountain Home and this witness, and also Lui Hip Chin.

Examination resumed:

Lui Hip Chin was not waiting on table all of the time. I came in the back door of the New York



Restaurant and Topping came in the front door in order to catch Lui Hip Chin on December 4, 1915. I notified the Seattle Office about Lui Hip Chin being in the New York Restaurant at Mountain Home.

Examination by Inspector Topping:

I notified the Seattle Office because I believed Lui Hip Chin was illegally here from his conduct and apparent lack of knowledge of the ways and customs of our country as I stated in my letter to the authorities. I did it out of a spirit of good citizenship. I was connected with the New York Post Office Department for about thirteen years. I have lived in Mountain Home ten years. I resigned from the Government service. Since in Idaho I have been president and director in mining companies owned by eastern people and am now in the automobile business.

Witness J. F. Bertram being sworn by Inspector Topping testified as follows:

Examination by Mr. Cavaney:

I did not know Lui Hip Chin by name but if the picture you show is the one referred to I believe as well as I can remember that he waited on me about six times. Of course it has been a long time and this is as near as I can remember. I do not know whether Lui Hip Chin was working in this restaurant as a laborer. I would consider him a laborer. I never saw him do anything else. I do not know whether he was employed by the proprietor of the restaurant or not.

Frank W. Boyd being sworn by Inspector Topping testified as follows:

Examination by Mr. Cavaney:

Lui Hip Chin waited on me in the New York Restaurant. I do not know whether Lui Hip Chin was employed in the New York Restaurant or not as a waiter. I first saw Lui Hip Chin in the restaurant in the month of November, 1915. I visited the restaurant quite frequently prior to December 4, 1915. I had some times one and some times three meals a day during that time. I am Probation Officer of Mountain Home.

Lum Wah Kee, witness for alien, being sworn by Inspector Topping testified as follows.

Examination by Mr. Cavaney:

My name is Lum Wah Kee. I run the New York Restaurant. I know Lui Hip Chin. I have known him about three or four weeks. He stayed at my place about three or four weeks during which time he boarded and roomed there. Lui Hip Chin told me he was in Mountain Home looking for business prospects. I have known Mr. John W. Jayne for three or four years. He boarded with me at the New York Restaurant. He had me arrested claiming that my towels were insanitary. Mr. Jayne did not pay me in full for his board. He still owes me \$36.20 which he has refused to pay. He has never called around since I demanded my money. Lui Hip Chin did not wash any dishes in my restaurant. Lui Hip Chin did not perform any manual labor of any kind while at my restaurant. I do not know Mr. Frank W. Boyd and Mr. J. F. Bertram. Lui Hip Chin did not wait on John W. Jayne six weeks prior to December,

1915. Mr. Jayne's statement in this regard is not true. I gave the bill against Mr. Jayne to an attorney for collection about a month ago. The Chinamen call this attorney by the name of Mack. This attorney is in town at the present time. This was about a week before Topping apprehended Lui Hip Chin at my restaurant. I do not have my account book with me but I can get it. I made the notation in this book in Chinese characters. There is no Chinese merchant's store in Mountain Home. There is not twenty-five Chinese in Mountain Home. Lui Hip Chin told me that there was not enough Chinese in Mountain Home to open up a store and that he would seek another location. Lui Hip Chin did not go to any real estate men for the purpose of making arrangements for getting a store to carry on business to my knowledge. I was in the New York Restaurant on December 4, 1915, and you (Topping) found Lui Hip Chin but he was not washing dishes. Lui Hip Chin was washing some rice about 9:30 in the morning. He was preparing his own breakfast at that time. I have lived in Mountain Home about six years.

Witness John W. Jayne recalled by Inspector Topping:

I do not know this Chinaman that has just testified by the name of Wah Kee. I know him as Lum Wah. He is the proprietor of the New York Restaurant. He did not render me a bill for \$36.20 for meals. No attorney by the name of Mack or any other attorney in Mountain Home ever endeavored



to collect the sum of \$36.20 from me for meals taken at the New York Restaurant. I do owe Lum Wah an unsettled account. I quit boarding at the New York Restaurant because the place was dirty and ill kept.

Lum Wah Kee recalled by Mr. Cavaney:

Lui Hip Chin does not understand English. He never took any orders for meals from any of the boarders in my restaurant. He was not working there and could not speak English. He helped a little in carrying dirty dishes from the table as a matter of convenience. Merely an accommodation.

Witness J. F. Bertram recalled by Inspector Topping:

I know Wah Kee. As I was passing by the restaurant one day Lum was standing by this young Chinaman and as I looked in I says: "What you doing Lum? You learning him to make bread?" and he says "Yes."

Petitioner tenders the foregoing and prays that it be allowed as a statement of all the evidence taken at said hearing in conformity with Equity Rule No. 75.

Dated this 12th day of July, 1916.

P. E. CAVANEY,  
Attorney for Petitioner.

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(Title of Court and Cause—No. 564.)  
ORDER APPROVING STATEMENT OF  
EVIDENCE.

The foregoing statement of the evidence being ten-

dered to me for settlement and allowance, and it appearing to me that said statement was lodged in due time with the clerk of this court, and notice of such lodgment and of the time of the proposed settlement appearing to have been given to all of the parties by their counsel; and it further appearing that more than ten days has elapsed since the notification of the United States Attorney for the District of Idaho and attorney for Lorenzo T. Plummer, United States Immigration Inspector, of the lodgment of said statement, and of the time and place when the petitioner herein would apply to the court or the judge thereof to approve said statement; and it further appearing that said statement is in all respects true and correct, and contains a full, true, and correct transcript of all of the evidence reduced to narrative form pertaining to the issues in said cause upon which the memorandum decision made and entered herein on the first day of May, 1916, and the memorandum decision made and entered herein on July 3, 1916, is based:

It is therefore ordered that said statement be, and the same is hereby approved for use on appeal of said cause to the Circuit Court of Appeals for the Ninth Circuit.

Dated this 25th day of July, 1916.

FRANK S. DIETRICH,  
United States District Judge.

Endorsed: Filed July 26, 1916. W. D. McReynolds, Clerk.

(ALIEN'S EXHIBIT A.)

Form 561.

WARRANT—ARREST OF ALIEN.

*United States of America*

*U. S. Department of Labor*

*Washington.*

No. 53947—13.

To Lorenzo T. Plummer, Inspector in Charge, Helena, Montana, Or to any Immigrant Inspector in the service of the United States.

*Whereas*, from evidence submitted to me, it appears that the alien,

*Lui Hip Chin,*

who landed at the port of San Francisco, Cal., ex SS "Siberia," on—the 20th day of September, 1915, is subject to be taken into custody and returned to the country whence he came under section 21 of the immigration act approved February 20, 1907, being subject to deportation under the provisions of a law of the United States, to-wit, the Chinese-exclusion laws, for the following among other reasons:

That he has been found within the United States in violation of Section 6, Chinese-exclusion act of May 5, 1892, as amended by the act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence; and that he has been found within the United States in violation of Section 6, Chinese-exclusion act of July 5, 1884, having secured admission on a certificate issued under said section, but having become a laborer since admission.

I, Louis F. Post, Assistant Secretary of Labor, by



virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expense of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1916." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of \$1000.00.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 21st day of December, 1915.

(Signed) Louis F. Post,  
Assistant Secretary of Labor.

Copy.

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(ALIEN'S EXHIBIT B.)  
DIRECTION FOR DELIVERY OF ALIEN FOR  
DEPORTATION.

*U. S. Department of Labor*  
*Bureau of Immigration*  
*Washington*

In answering refer to No. 53947—13.

March 21, 1916.

Inspector in Charge,  
Immigration Service,  
Helena, Montana.

Sir:

The Bureau acknowledges the receipt of your let-

34      *Matter of Application of Lui Hip Chin*

ter of Feb. 11th, No. 4—141, transmitting record of hearing accorded the alien

*Lui Hip, Chin,*

who landed at the port of San Francisco, Cal., on Sept. 13, 1915.

After a careful examination of the evidence submitted in this case, the Department is of opinion that the alien is in the United States in violation of law. You are therefore directed to cause him to be taken into custody and conveyed to Seattle, Wash., for deportation, the expenses incident to such conveyance, including the employment of an attendant to assist in delivery, if necessary, at a nominal compensation of \$1.00 and expenses both ways, being authorized, payable from the appropriation "Expenses of Regulating Immigration, 1916."

The Seattle office has been requested to furnish you with sailing advices.

Respectfully,

(Signed) Alfred Hampton,

Approved:                      Acting Commissioner General.

(Signed) Louis F. Post,

Assistant Secretary.

Inclose W. D. No. 6192.

(Copy.)

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ALIEN'S EXHIBIT C.)

Bureau of Immigration—Form S D.

WARRANT—DEPORTATION OF ALIEN.

*United States of America*  
*U. S. Department of Labor*  
*Washington*

No. 53947—13.

Inc. 6192.

To Henry M. White, Commissioner of Immigration,  
Seattle, Washington.

*Whereas*, from proofs submitted to me, after due hearing before Immigrant Inspector Thomas Topping, held at Boise, Idaho, I have become satisfied that the alien

*Lui Hip Chin,*

who landed at the port of San Francisco, Cal., on the 13th day of September, 1915, is subject to be returned to the country whence he came under section 21 of the immigration act approved February 20, 1907, being subject to deportation under the provisions of a law of the United States, to-wit, the Chinese-exclusion laws, in that:

He has been found within the United States in violation of Section 6, Chinese-exclusion act of May 5, 1892, as amended by the act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence; and he has been found within the United States in violation of Section 6, Chinese-exclusion act of July 5, 1884, having secured admission on a certificate issued under said section, but having become a laborer since admission,

I, Louis F. Post, Assistant Secretary of Labor, by



virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to China,—the country whence he came, at the expense of appropriation “Expenses of Regulating Immigration, 1916.” You are directed to purchase transportation for the alien from Seattle, Wash., to his home in China, at the lowest available rate, payable from the above-named appropriation.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 21st day of March, 1916.

(Signed) Louis F. Post,  
Assistant Secretary of Labor.

(Copy.)

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(Title of Court and Cause—No. 564.)

MEMORANDUM DECISION.      .

May 1, 1916.

P. E. Cavaney, Attorney for Petitioner.

J. L. McClear, U. S. Attorney, Attorney for United States.

*Dietrich, District Judge:*

An order was made by the officers of the Bureau of Immigration for the deportation of petitioner, upon the ground that he is a Chinese laborer. It seems that he landed at the port of San Francisco on September 13, 1915, and was admitted as a merchant, but after a hearing it was found by the Department that he had since become a laborer.

As recognized by counsel for the petitioner, the



conditions under which the courts will interfere with the operations of the Immigration Department fall within very narrow limits. No serious contention is made that the petitioner was denied a fair hearing. Upon the authority of *Whitfield v. Hanges*, 222 Fed. 745, it is suggested that an immigration officer is not qualified to administer an oath at a hearing such as is involved in this case, but the suggestion would seem to be irrelevant for the reason that the record does not show by whom the oath was administered at the hearing. But even if the inference be drawn that it was administered only by the inspector the fact cannot avail the petitioner now, for no objection was made by him during the course of the hearing or at any time thereafter prior to this petition. It is further suggested that the affidavits or ex parte depositions of the applicant and certain other persons were taken by the inspector before the applicant was advised of the nature of the charge against him or had the advice of counsel. These depositions or affidavits appear in the record. Upon consideration I have held that in proceedings of this character such depositions and affidavits may be used, provided the affiants or deponents are available for cross examination, and I see no reason now for receding from that view. Counsel for the petitioner here had and embraced the opportunity of cross examining each one of the deponents, both in relation to the testimony directly given and to the statements made in the depositions or affidavits.

After all, the only serious question is whether or

not, the testimony being conflicting, there was substantial evidence to support the finding of the immigration officers, and clearly I think this question must be answered in the affirmative. Two witnesses whose testimony is admittedly unbiased concur in stating that the petitioner was engaged in service as a waiter in a Chinese restaurant at Mountain Home. It is true that they did not know under what conditions he was rendering the service, but that he did so serve cannot be doubted. Their testimony is corroborated and amplified by the testimony of another witness, who, it is claimed by the petitioner, was biased and prejudiced against him. In supervising the cross examination of this witness the inspector was in error in the view that it was immaterial to inquire about his relations to the restaurant in question and to the proprietor thereof, for such inquiry pertained to the credibility and fairness of his testimony. But it may be added that at the time the cross examination upon this head was stopped it had already gone far enough to serve the petitioner's purpose. Doubt is raised touching the credibility of the entire testimony of the petitioner and also of the proprietor of the restaurant by their unqualified denials that the petitioner ever waited upon the table in the restaurant. It is hard to escape the conviction that they wilfully perverted the truth. Furthermore, the conduct of the petitioner and of his friends among the Chinamen of the community creates a suspicion to say the least that the claim that he intended to engage in the mercantile business

was a pretension only. It was of course very easy for his friends to supply the petitioner with the thousand dollars which he seems to have had in his possession when he landed, so that the fact of such possession is not of controlling significance. It is to be considered in the light of the further fact that apparently he did not have sufficient funds at his disposal to pay his expenses from San Francisco to Mountain Home, and the money therefor was furnished by his relatives in Mountain Home.

Upon the whole, I am inclined to think that not only is there substantial evidence, but a preponderance of the evidence, in support of the finding upon which the warrant of deportation is based. The petition will therefore be denied.

Endorsed: Filed May 1, 1916. W. D. McReynolds, Clerk.

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(Title of Court and Cause—No. 564.)

PETITION FOR REHEARING.

Your petitioner, by and through his attorney, P. E. Cavaney, Esq., shows to this Honorable Court:

First: That since the argument and memorandum decision rendered herein by the Honorable Court on the first day of May, 1916, refusing to grant a writ of habeas corpus in the above entitled matter, counsel for said petitioner has found a case decided on January 22, 1916, by District Judge Cochran of the United States District Court for the Eastern Division of Kentucky entitled *Ex Parte Woo Jan*,



228 Federal Reporter, page 927, directly in point on a matter of jurisdiction in the above entitled cause which was not fully presented to the Court at the time of hearing and no argument was presented upon said point at said hearing.

Second: Said petitioner further contends and shows that the Department of Commerce and Labor of the United States has no jurisdiction to deport an alien who is in the United States in violation of Section 6 of the Chinese Exclusion Act of May 5, 1892 as amended by the Act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence, or to deport an alien found within the United States in violation of Section 6 of the Chinese Exclusion Act of July 5, 1884, having secured admission on a certificate issued under said section but having become a laborer since said admission, but that the only authority to deport such an alien is found in the Chinese Exclusion Act of July 5, 1884, and subsequent amendments thereto, and that a deportment of such an alien could only be done by the Judicial Department of the Government and not by the Executive Department of the Government of the United States, and said petitioner herein makes the said decision hereinbefore referred to a part of this petition for rehearing as though the same was herein set out in haec verba.

Wherefore your petitioner prays that a rehearing may be granted herein and that said writ of habeas corpus be granted and your petitioner discharged, and your petitioner will ever so pray.



Dated at Boise, Idaho, this 1st day of July, 1916.

P. E. CAVANEY,  
Attorney for Petitioner.

Endorsed: Filed July 1, 1916. W. D. McReynolds, Clerk.

(Duly verified.)

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(Title of Court and Cause—No. 564.)

MEMORANDUM DECISION ON PETITION  
FOR REHEARING.

July 3, 1916.

P. E. Cavaney, Attorney for Petitioner.

*Dietrich, District Judge:*

While appreciating and commending the spirit in which the petition for rehearing is presented, I am unable to grant the prayer thereof. The petitioner's sole reliance is the case of *Ex parte Woo Jan*, 228 Fed. 927, but while the conclusion there reached supports the petitioner's contention, I am unable to concur in it. Judge Cochran frankly states that his views are out of harmony with the trend of federal judicial opinion. And upon a re-examination of the *Wong You* case (223 U. S. 67) I am unable to escape the conclusion that in cases of this character it is optional with the Government whether it will proceed under the Chinese exclusion act or under the general immigration act. Accordingly the petition will be denied.

Endorsed: Filed July 3, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause—No. 564.)

PETITION FOR APPEAL.

*To the Judge and Clerk of said Court, and to J. L. McClear, United States Attorney for the District of Idaho:*

Your petitioner herein, Lui Hip Chin, by his attorney, P. E. Cavaney, Esq., feeling himself aggrieved by an order and judgment made and entered on the first day of May, 1916, in the above entitled proceeding by the Honorable Frank S. Dietrich, Judge of the above entitled Court, denying the writ of habeas corpus herein, and the order denying the petition for a rehearing in said cause made and entered by said Court on July 3, 1916, does hereby appeal from said order and judgment denying said writ of habeas corpus, and from said order denying petition for a rehearing herein, to the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, and prays that his appeal may be allowed, and that a transcript of the record of the proceeding and papers upon which said order and judgment denying said writ of habeas corpus, and said petition for rehearing, duly authenticated, may be sent to the said Circuit Court of Appeals of the Ninth Judicial Circuit of the United States.

Dated this 8th day of July, 1916.

P. E. CAVANEY,  
Attorney for Petitioner.

Endorsed: Filed July 8, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause—No. 564.)

ASSIGNMENT OF ERRORS.

Comes now the petitioner herein, Lui Hip Chin, by his attorney, and files the following assignment of errors upon which he will rely upon his appeal from said memorandum decision herein made by this honorable court on the first day of May, 1916, in the above entitled cause.

I.

That said memorandum decision is erroneous wherein it is held that your petitioner had a fair and impartial hearing before the said Department of Labor of the United States as contemplated by law and the rules and regulations of the said department.

II.

That said memorandum decision is erroneous wherein it held that the said Chinese Immigrant Inspector who conducted the said hearing herein did not abuse the discretion imposed in him by law and the rules and regulations of the Department of Labor of the United States at said hearing.

III.

That said memorandum decision is erroneous wherein it held that said Chinese Immigrant Inspector who conducted the hearing herein was qualified to administer an oath to the witnesses at the hearing in said cause.

IV.

That said memorandum decision is erroneous



wherein it held that your petitioner had waived his right in the court to object to certain irrelevant and incompetent testimony which was introduced upon the summary hearing in said cause before the said Chinese Immigrant Inspector because the record in said cause did not show that your petitioner objected to said testimony when the same was offered.

V.

That said memorandum decision is erroneous wherein it held that the ex parte deposition of said petitioner and certain other persons taken prior to the hearing before the Chinese Immigrant Inspector and not in the presence of the said petitioner, and before said petitioner was advised of the nature of the charge against him, and in the absence of his counsel, were admissable in evidence against the said petitioner in said proceeding.

VI.

That said memorandum decision is erroneous wherein it held that said petitioner had an opportunity to cross examine all of the parties who made ex parte statements in said cause.

VII.

That said memorandum decision is erroneous wherein it held that counsel for petitioner in said proceeding had embraced the opportunity of cross examining all said deponents.

VIII.

That said memorandum decision is erroneous wherein it held that there was substantial evidence



adduced at said hearing to support the findings of the Department of Labor of the United States.

IX.

That said memorandum decision is erroneous wherein it held that your petitioner was a laborer as contemplated by law and the rules and regulations of the Department of Labor of the United States.

X.

That said memorandum decision is erroneous wherein it held that said Chinese Immigrant Inspector did not abuse his discretion in prohibiting counsel for petitioner from cross examining a certain witness, John W. Jayne, produced on the part of the Department of Labor of the United States.

XI.

That said memorandum decision is erroneous wherein it held that said petitioner and other witnesses produced by your petitioner at said hearing swore falsely.

XII.

That said memorandum decision is erroneous wherein the court passed on the weight of the evidence in said hearing.

XIII.

That said memorandum decision is erroneous wherein it held that the claim of the petitioner to engage in a mercantile business in the United States was pretentious and not bona fide.

XIV.

Said court should have held that when your petitioner testified that he had \$1000.00 and was issued a merchant's certificate when he landed in the United States, that the burden was then shifted to the Government to overcome the prima facie showing of his right to remain in the United States as a merchant.

XV.

The court was in error in commenting upon the weight of the evidence or any presumptions arising therefrom.

XVI.

The court was in error in holding that there was a preponderance of the evidence to support the findings upon which the warrant of deportation was based.

XVII.

The said court should have held that said alien was arrested and ordered deported from the United States without due process of law.

XVIII.

Said court should have held that said warrant of arrest was issued against your said petitioner without due authority of law.

XIX.

Said court should have held that said Department of Labor of the United States had no authority whatever or at all to issue said warrant of arrest or deportation or to hear said cause.

XX.

Said court should have held that said warrant of deportation in said cause was defective and void for the reason that said warrant did not direct that the said Lui Hip Chin be deported to the port in China from which he embarked, or to the port nearest to the place where said alien was born.

XXI.

Said court should have held that said hearing and proceeding in the deportation of said alien was contrary to law and in violation of the Chinese Exclusion Laws of the United States and the rules and regulations relating thereto.

XXII.

Said court should have held that said Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913, had no application to the deportation of Chinese persons in the United States in violation of Section 6 of the Act of May 5, 1892, as amended by the Act of November 3, 1893, or Section 6 of the Chinese Exclusion Act of July 5, 1884.

XXIII.

Said court should have held that there was no legal evidence taken at said hearing of said cause to justify the deportation of said alien.

XXIV.

Said court should have held that there was no evidence to show that the said Lui Hip Chin was a Chinese person.



## XXV.

Said court should have granted the writ of habeas corpus.

In order that the foregoing assignments of error may be and appear of record, petitioner herein presents the same to the court and prays that such disposition may be made thereof as may be in accordance with law and the Statutes of the United States in such case made and provided, and petitioner respectfully prays a reversal of said decision made and entered in said court, and that he be discharged forthwith.

P. E. CAVANEY,  
Attorney for Petitioner.  
Residence and Post Office  
address: Boise, Idaho.

Endorsed: Filed July 8, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause—No. 564.)

ORDER ALLOWING APPEAL.

On motion of P. E. Cavaney, Esq., attorney for petitioner, Lui Hip Chin, it is ordered that an appeal from the judgment made and entered by the Honorable Court herein on the first day of May, 1916, denying the writ of habeas corpus, and from the judgment denying the motion for rehearing herein, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, be, and the same is hereby allowed, and it is further ordered



that the bond for costs be and the same is hereby fixed in the sum of One Hundred Dollars.

Dated at Boise, Idaho, this 10th day of July, 1916.

FRANK S. DIETRICH,

District Judge.

Endorsed: Filed July 10, 1916.

W. D. McReynolds, Clerk.

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*In the District Court of the United States, District  
of Idaho, Southern Division.*

In the matter of application of Lui Hip Chin, an  
Alien for a Writ of Habeas Corpus.

CITATION.

*The President of the United States to J. L. McClear,  
United States District Attorney for the District  
of Idaho, and to Lorenzo T. Plummer, Chinese  
Immigrant Inspector in Charge at Helena, Mon-  
tana, Greeting:*

*You are hereby cited and admonished to be and ap-  
pear in the United States Circuit Court of Appeals  
for the Ninth Circuit, to be held at the City of San  
Francisco, in the State of California, within thirty  
(30) days from the date of this writ, pursuant to an  
appeal filed in the Clerk's office of the District Court  
of the United States, District of Idaho, Central Divi-  
sion, wherein Lui Hip Chin, an Alien, has made ap-  
plication for a Writ of Habeas Corpus, to show cause,  
if any there be, why the judgment in the said appeal  
mentioned should not be corrected and speedy justice  
should not be done in that behalf.*

Witness the Honorable Frank S. Dietrich, Judge of the United States District Court for the District of Idaho, Southern Division, this 10th day of July, 1916.

FRANK S. DIETRICH,  
Judge of the United States Dis-  
trict Court for the District  
of Idaho, Central Division.

Filed July 10, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause—No. 564.)

PRAECIPE.

*To the Clerk of the above entitled Court:*

You are hereby requested to transmit in printed form to the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the following portions of the record in the above entitled cause, to-wit:

1. Petition for Writ of Habeas Corpus.
2. Order for Writ of Habeas Corpus.
3. Demurrer.
4. Minutes of the Court in relation to said matter.
5. Statement of the evidence.
6. Memorandum decision of the Court.
7. Petition for rehearing.
8. Memorandum decision denying rehearing.
9. Petition for appeal.
10. Assignment of errors
11. Order allowing appeal.

12. Citation.

13. This praecipe.

14. All exhibits used upon the hearing of said cause. Said exhibits to be printed at length in the record at the respective places where it is shown by the statement of the evidence the said exhibits were admitted in evidence.

Petitioner hereby tenders copies of the above specified portion of the record to be used upon the appeal herein which it will be necessary for you to transcribe.

Dated at Boise, Idaho, this 12th day of July, 1916.

P. E. CAVANEY,

Attorney for Petitioner.

Endorsed: Filed July 12, 1916.

W. D. McReynolds, Clerk.

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### RETURN TO RECORD.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and the same is transmitted accordingly.

W. D. McREYNOLDS, Clerk.

(Seal.)

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I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing tran-



script of pages from 1 to 52, inclusive, contain true and correct copies of the petition for a Writ of Habeas Corpus, Order for Writ of Habeas Corpus, Demurrer, Minutes of the Court, Statement of Evidence, Memorandum Decision of the Court, Petition for Rehearing, Memorandum Decision Denying Petition for Rehearing, Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Citation (original), Praecipe, Return to Record and Clerk's Certificate, which together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$62.70, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 26th day of July, 1916.

W. D. McREYNOLDS,

(Seal.)

Clerk.